

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 2 of the) ET Docket No. 94-45
Commission's Rules Relating to the) RM-8125
Marketing and Authorization of)
Radio Frequency Devices)

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**COMMENTS OF THE CONSUMER ELECTRONICS GROUP
OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") which the Commission issued in the above-captioned proceeding on June 9, 1994.¹ In its Notice, the Commission has proposed to amend the marketing regulations and equipment authorization procedures applicable to radio frequency ("RF") devices. As set forth more fully below, EIA/CEG generally supports the Commission's proposed marketing rules and suggests additional changes in these rules to better serve the public interest.

I. INTRODUCTION

EIA/CEG represents the consumer electronics industry, an industry that provides the American public with televisions, radios, videocassette recorders and videocameras, compact disc players, and a wide variety of other products. Its membership includes most of the major

¹ See Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices, ET Docket No. 94-45, RM-8125, 9 FCC Rcd 2702 (1994).

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U.S. consumer electronics manufacturers, as well as many smaller companies that design, produce, import, distribute, sell, and service electronic products. Many of EIA/CEG's members manufacture products that are subject to the Commission's rules governing the marketing and authorization of RF devices.

As the Commission's Notice indicates, this proceeding was initiated, at least in part, in response to the petition for rulemaking ("Petition") which EIA/CEG filed on October 16, 1992.² In its Petition, EIA/CEG pointed out that the Commission's marketing rules governing RF devices -- particularly the exceptions to the general prohibition on marketing unapproved equipment -- have been applied inconsistently and, as a consequence, have created industry confusion and have limited the opportunities for many consumer products to be promoted to potential customers.³ The Petition also noted the different standards and requirements in the existing marketing rules, and proposed an alternative that would simplify these rules, eliminate a number of anomalies, and ensure "a fair balance between the benefits of introducing new consumer products and the need to ensure that the marketing of these products does not cause harmful interference with radio communications."⁴

EIA/CEG therefore applauds the Commission for initiating this proceeding and proposing much needed changes in the rules governing the marketing of RF devices.

² See Petition for Rulemaking of the Consumer Electronics Group of the Electronic Industries Association, RM-8125 (filed Oct. 16, 1992).

³ Id. at 2.

⁴ Id. at 8.

II. THE COMMISSION'S PROPOSED MARKETING RULES ARE GENERALLY SOUND AND SHOULD BE PROMPTLY ADOPTED.

In its Notice, the Commission has proposed to consolidate the rules governing the marketing of RF devices in a new Section 2.803. EIA/CEG heartily endorses the Commission's proposal for a number of reasons. First, the new regulations will simplify and eliminate the regulatory anomalies in the existing marketing rules. These rules, as the Commission is well aware, were developed on an incremental basis at a time when Part 15 reflected a more complex and device-specific regulatory scheme. Having completely revised Part 15 to make it more uniform and less device specific, the Commission should now do the same for the marketing rules of Part 2.

Second, the proposed rules generally reflect a fair balance between the benefits of introducing new consumer products and the need to ensure that the marketing of these products does not cause harmful interference with radio communications. The new rules will provide the consumer electronics industry with the opportunity to present prototypes of innovative equipment to retailers, distributors and consumers, to exchange ideas, to discuss product improvements, and to facilitate the efficient development of more marketable products. Such efforts will help establish the market acceptability of new equipment designs and allow significant product exposure for those entities that do not have national sales organizations. The proposed rules will therefore benefit consumers and those entities involved in developing and marketing consumer products, without risking increased radio interference.

The proposed rules are also consistent with the Commission's past recognition of the importance of facilitating the introduction of new and innovative products to retailers and distributors at industry trade shows prior to Commission authorization. In previous proceedings,

the Commission has responded to the requests of EIA/CEG and others to create exceptions to the general prohibition on marketing prior to equipment approval. In doing so, the Commission has found that it is in the public interest to allow advertising and other marketing at industry shows prior to Commission authorization, subject to proper notice that the products in question do not yet comply with the Commission's rules.⁵ Although the procedures employed by the Commission for this purpose have worked well in most cases, the time has come to eliminate the remaining anomalies in the Commission's rules that no longer serve any meaningful regulatory purpose.

EIA/CEG therefore urges the Commission to promptly adopt its proposed marketing rules with the modifications set forth below.

III. THE COMMISSION'S PROPOSED MARKETING RULES SHOULD BE MADE EXPRESSLY APPLICABLE TO ALL RF DEVICES.

In its Notice, the Commission has proposed to apply its new marketing rules to all RF devices "regardless of the rule part under which they operate."⁶ The Commission, however, has invited comment on a statement appearing in EIA/CEG's Petition to the effect that the Association would not object if the Commission were to exclude devices subject to authorization under type acceptance from the new marketing rules. EIA/CEG urges the Commission not to so limit the application of its new rules.

⁵ See, e.g., Interpretation and Amendment of Part 2, Section 2.803 of the Commission's Rules Relating to the Marketing of Radiofrequency Devices, 58 F.C.C.2d 784, 786, 788 (1976).

⁶ Notice, 9 FCC Rcd at 2704.

In its Petition, EIA/CEG proposed the kind of comprehensive changes in Part 2's marketing rules that are embodied in the regulations accompanying the Commission's Notice. In particular, EIA/CEG proposed that any new marketing rules apply to all RF devices. Out of an abundance of caution, however, and in an effort to ensure that any concerns which the Commission might have about certain types of equipment not impede the adoption of new marketing rules for other equipment, EIA/CEG indicated that it would not object if the new rules were limited to equipment subject to verification, certification and notification. EIA/CEG, however, did not propose such a limitation. EIA/CEG is pleased that the Commission has tentatively concluded that its new marketing rules should apply broadly. There are no sound public policy reasons why the Commission's new rules should be limited to specific RF devices.

EIA/CEG therefore urges the Commission to make its new marketing rules expressly applicable to all RF devices.

IV. THE COMMISSION'S PROPOSED MARKETING RULES SHOULD EXEMPT FROM FURTHER LICENSING REQUIREMENTS RF DEVICES THAT ARE OPERATED PURSUANT TO SECTION 2.803(e)(2) THAT WILL ULTIMATELY BE AUTHORIZED PURSUANT TO PART 15.

EIA/CEG's principal goal in asking the Commission to initiate this proceeding was to facilitate the introduction and demonstration of new products and technologies at industry trade shows, such as EIA/CEG's Consumer Electronics Show. In particular, EIA/CEG sought to eliminate the burdensome requirement that manufacturers file applications for and obtain experimental station licenses or special temporary authorization under Part 5 of the Commission's rules to demonstrate RF devices at industry trade shows, where that equipment will ultimately be authorized under Part 15 of the Commission's rules. Although the

Commission's Notice recognizes the need to remove "unnecessary restrictions" from the existing marketing rules to permit the operation of RF devices at industry trade shows, the proposed rules accompanying the Notice fall short in this regard.

As EIA/CEG's Petition requested and as the text of the Notice appears to promise, Section 2.803(e)(2) of the Commission's new rules allows RF devices to be operated for demonstration purposes at industry trade shows. EIA/CEG endorses this provision of the Commission's proposed marketing rules. Section 2.803(e)(6), however, at least as currently framed, takes back the authority which Section 2.803(e)(2) purports to grant. Like footnote 9 of the Notice, Section 2.803(e)(6) maintains today's burdensome -- and needless -- requirement that manufacturers obtain experimental station licenses or special temporary authorization for RF devices that will ultimately be authorized under Part 15 of the Commission's rules. EIA/CEG fails to understand the logic behind such a rule, particularly given the requirement of proposed Section 2.803(g) that all such RF devices be "designed with the intent of compliance" with the Commission's rules.

EIA/CEG therefore urges the Commission to clearly exempt from any further licensing requirements RF devices that are operated at trade shows that will ultimately be authorized under Part 15.

V. SECTIONS 2.803(b), (c) AND (d) OF THE COMMISSION'S PROPOSED MARKETING RULES SHOULD BE CONSOLIDATED AND SIMPLIFIED.

Section 2.803(b) of the Commission's proposed rules would allow conditional sales contracts between manufacturers and wholesalers or retailers for RF devices that have not yet been authorized or found to be in compliance with the Commission's rules, as long as

delivery is contingent on such authorization or compliance. Section 2.803(c) would allow the advertising and display of RF devices that have not yet been authorized or found to be in compliance with the Commission's rules, as long as notice is given that the equipment may not be offered for sale or lease until such authorization or compliance. Section 2.803(d) would permit the announcement and offer for sale of RF devices that have not yet been authorized or found to be in compliance with the Commission's rules (other than to the general public), as long as the buyer is advised in writing that the equipment must comply with all relevant FCC requirements prior to delivery.

EIA/CEG submits that, while all three sections appear to have the same goal, they are needlessly confusing and apparently contradictory. The notice required by Section 2.803(c), for example, appears to be inconsistent with the sales activities contemplated by Sections 2.803(b) and (d). This should plainly be corrected. Otherwise, the rules would permit activities expressly prohibited by the notice prescribed by Section 2.803(c). Sections 2.803(b) and (d) present a different issue. Both prohibit the delivery of equipment unless it is in compliance with all relevant FCC requirements, but they do so in different ways. There is no apparent reason why this should be the case.

EIA/CEG therefore urges the Commission to make these three sections consistent and consolidate them in a single provision, along the lines proposed by EIA/CEG's Petition.

VI. THE COMMISSION'S PROPOSED MARKETING RULES SHOULD PERMIT THE DEMONSTRATION OF RF DEVICES AT (NON-TRADE SHOW) EXHIBITIONS.


Section 2.803(e)(2) of the Commission's proposed rules would permit the demonstration of RF devices that have not yet been authorized or found to be in compliance with the Commission's rules at "trade shows." EIA/CEG requests that this exception be expanded to include demonstrations at "exhibitions." Non-trade show exhibitions, like trade shows, provide manufacturers with important local and regional opportunities to display and demonstrate their latest products and technologies. Because "exhibitions" are expressly referenced by the advertising and display provisions of Section 2.803(c), EIA/CEG fears that the exclusion of "exhibitions" from Section 2.803(e)(2) could be construed to preclude the demonstration of RF devices at such events.

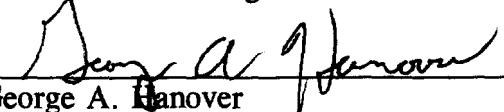
VII. CONCLUSION

As set forth above, EIA/CEG applauds the Commission for proposing salutary changes in Part 2's marketing rules. With the changes discussed above, these rules will serve the public interest and should be promptly adopted by the Commission.

Respectfully submitted,

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